

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known As "Contra Costa 8" Pursuant to A Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets.

(U 39 E)

Application 05-06-029
(Filed June 17, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR
A PROTECTIVE ORDER GOVERNING DISCOVERY**

On June 17, 2005, Pacific Gas and Electric Company (PG&E) filed Application (A.) 05-06-029 for Commission approval of the terms and conditions of the Asset Transfer Agreement (ATA) and ancillary agreements and for authorization to complete construction of a new combined cycle electric generating facility to be known as Contra Costa Unit 8 (CC8), and for approval of the requested funding and cost recovery mechanisms. As part of its application, PG&E filed a motion for protective order for the data and information used in support of testimony filed with the application. In particular, PG&E seeks an order setting forth the conditions under which parties to this proceeding may obtain access to confidential, market-sensitive, proprietary procurement

information, and computer models, databases, programs and input data set formats used by PG&E in support of its application.

PG&E argues that maintaining the confidentiality of its electric energy resources and its procurement plan for managing its energy resources is critical to the utility's ability to function effectively in the energy markets. PG&E fears that if this information fell into other market participants' hands, it could be used to take advantage of PG&E as it works to manage its energy resources to meet customer needs on a least-cost basis.

I grant the request by PG&E that the protected material should be made available under a mutually agreeable protective order to any party in the proceeding, but PG&E may withhold the protected materials from market participants who do not sign the protective order.

PG&E requests that the assigned Administrative law Judge (ALJ) issue an order setting forth the conditions under which parties to this proceeding may obtain access to the confidential data and information it seeks to protect. In summary, PG&E is seeking a non-disclosure agreement governing discovery. Consistent with Resolution ALJ-164 concerning discovery disputes, I am directing the parties to meet-and-confer to work out a non-disclosure agreement among themselves for the exchange of information and data in this proceeding. The parties are in the best position to balance appropriate protection of market-sensitive information while maximizing access to information. The parties should tailor the protective order to protect only those documents that are in fact legally protectable.

The non-disclosure agreement should be submitted to the assigned ALJ and circulated to the service list. If the non-disclosure agreement is consistent with protections established by statute and Commission orders, yet allows

parties access to information necessary for their full participation in the proceeding, the agreement will be adopted in an ALJ ruling for this proceeding.

If the parties are not successful in crafting a non-disclosure agreement, PG&E, or any other party, may renew the motion for a protective order that includes a declaration concerning the efforts of the parties to reach an agreement. This motion should also include stipulations concerning discovery that were reached, and should only ask the ALJ to rule on specific categories of information, computer programs, databases, programs and input data that remain in dispute. Once the ALJ rules, the parties will then draft the language of the protective order in conformity with the ALJ ruling.

Good cause appearing, **IT IS RULED** that:

1. Pacific Gas and Electric Company's (PG&E) request for a protective order that governs discovery of and access to confidential, market-sensitive, proprietary procurement information, and computer models, databases, programs and input data set formats PG&E used in support of testimony filed in this application is granted.

2. The parties seeking access to the confidential, commercially sensitive, proprietary electric procurement information and for confidential and trade-secret computer model information should meet-and-confer and work out a non-disclosure agreement governing discovery and exchange of the such information.

3. The non-disclosure agreement should be submitted to the assigned ALJ and circulated to the service list. If the non-disclosure agreement is consistent with protections established by statute and Commission orders, yet allows parties access to information necessary for their full participation in the proceeding, the agreement will be adopted in an ALJ ruling for this proceeding.

4. If the parties are not successful in crafting a non-disclosure agreement, PG&E, or any other party, may renew the motion for a protective order that includes a declaration concerning the efforts of the parties to reach an agreement. This motion should also include stipulations concerning discovery that were reached, and should only ask the ALJ to rule on specific categories of information, computer programs, databases, programs and input data that remain in dispute.

5. The ALJ will then rule on the disputed categories and the parties will then draft a protective order that is consistent with that ruling.

Dated July 15, 2005, at San Francisco, California.

/s/ CAROL A. BROWN

Carol A. Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Pacific Gas and Electric Company's Motion for a Protective Order Governing Discovery on all parties of record in this proceeding or their attorneys of record.

Dated July 15, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.